IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10303 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL BHOGIBHAI MOTIBHAI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 10303 of 1993

MR KIRIT I PATEL for Petitioner

MR RC JANI for Respondent

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 25/03/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India challenging the average bill dated

15.09.1992 issued by the respondent to the petitioner for the period from April 1992 to 13.09.1992 and demand notice dated 23.09.1993. By way of amendment, the petitioner has also challenged the order dated 09.09.1993 passed by the Appellate Committee of the respondent rejecting the appeal of the petitioner filed by him against the average bill dated 15.09.1992.

2. It is the case of the petitioner that the petitioner is having electricity connection given by the Gujarat Electricity Board and from time to time the meter installed was inspected by the respondent. However, nothing adverse was found against the petitioner. On 13.09.1992, all of a sudden, an inspection was carried out by the officer of the respondent, as a routine visit. At that time, the officer reported that the meter was running slow and, therefore, a panchnama was prepared by the Officer of the respondent Board on 13.09.1992. After preparation of panchnama, the Gujarat Electricity Board has issued an average bill dated 15.09.2002 for an amount of Rs.1,61,162.05ps. for the period from April 92 to 13.09.1992, which is impugned in the present petition.

Being aggrieved and dissatisfied with the aforesaid additional average bill dated 15.09.1992, the petitioner had preferred an appeal before the Appellate Committee constituted by the respondent Board and, according to the petitioner, no decision was taken by the Appellate Committee, when the present petition was filed. Thereafter, it seems that the Appellate Committee has passed order dated 09.09.2003, which was signed on 20.09.2003, by which the Appellate Committee has rejected the appeal preferred by the petitioner. In the meantime, some amount has also been deposited by the petitioner as a condition precedent for hearing the appeal. Even the demand notice dated 23.09.1993 was also issued to the petitioner calling upon him to pay/deposit the amount of Rs.1,12,813.43ps.. The said notice is also impugned in the instant petition.

3. Mr.Kirit I.Patel, learned advocate appearing for the petitioner, has submitted that from the panchnama, it is clear that the case of theft was not made out by the Gujarat Electricity Board and as the impugned additional average bill dated 15.09.1993 is absolutely illegal, the same is required to be quashed and set aside. It is further contended that the order dated 09.09.2003 passed by the Appellate Committee is also bad in law as the same is a non-speaking order and no reasons are assigned while rejecting the appeal of the petitioner and, therefore, it is required to be quashed and set aside by this Court.

On behalf of the petitioner, Mr.Patel has also submitted that the Gujarat Electricity Board has not followed the procedure which is required to be followed under Section 26 of the Indian Electricity Act.

4. On the other hand, Mr.R.C.Jani, learned advocate appearing for the respondent, has submitted that a detailed reply has been filed by the Gujarat Electricity Board justifying its additional average bill dated 15.09.1992 and the demand notice dated 23.09.1993. It is pointed out by Mr.Jani that the case of theft has been made out against the petitioner and as it was found by the authority that the meter was running slow, the authority was justified in issuing the additional bill and, therefore, the petition of the petitioner is required to be dismissed. It is further submitted by Mr.Jani that considering overall facts and circumstances of the case, as the Appellate Committee has found that there is no ground in the appeal preferred by the petitioner, the appeal has been rightly rejected by the Committee.

5. Heard the learned advocates of the parties. While admitting the petition, this Court passed an order dated 16.08.1994, vacating interim relief granted earlier and granted liberty to the petitioner to pay the amount in question by way of installments. An undertaking was also given by the petitioner that he would make payment in question in four equal installments. Mr.Patel, learned advocate appearing for the petitioner, makes statement that the said amount has been deposited by the petitioner.

6. On going through the papers and the order passed by the Appellate Committee, it is clear that no reasons are assigned by the Appellate Committee while dismissing the appeal of the petitioner. Even the submissions made on behalf of the petitioner are also not recorded and the Appellate Committee has dismissed the appeal preferred by the petitioner by a one line order. Thus, the order impugned is a non-speaking order.

7. Under the circumstances, the present petition is required to be allowed on a short ground that the impugned order dated 09.09.1993 passed by the Appellate Committee is a non-speaking order. Accordingly, the impugned order dated 09.09.2003 is hereby quashed and set aside, and the matter is remanded to the Appellate Committee for deciding the appeal preferred by the petitioner against the additional average bill dated 15.09.1992 issued by the Gujarat Electricity Board to him

for the period between April 1992 and 13.09.1992, in accordance with law and after giving an opportunity of being heard to the petitioner. The Appellate Committee is directed to pass a speaking order and communicate the same to the petitioner.

It is made clear that the amount, which is deposited by the petitioner pursuant to the order of the Court will be subject to ultimate decision to be taken by the Appellate Committee. The Appellate Committee is directed to take appropriate decision in accordance with law within a period of three months from the date of receipt of this order or production of certified copy of this order before the authority. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

(M.R. Shah, J.)

Rajendra